

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48179 of 2023

Applicant :- Jitendra Alias Jhony

Opposite Party :- State of U.P.

Counsel for Applicant :- Bhuvnesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially F.I.R. dated 08.08.2023 was lodged under Section 302 I.P.C. alleging therein that on 05.08.2023 husband of complainant went outside the house to get repair mobile phone, when he did not return after much time grand son of complainant made phone call several times then her husband told that he will return soon, but thereafter when he did not return, her daughter also made a call at about 8:00 p.m. then her husband told that he is accompanying with Golu @ Farman in a vehicle and Golu will drop him at the house, but he did not return whole night and in the morning of 06.08.2023 at about 7:00 a.m. the complainant received an information that dead body of her husband is lying on the side of the road situated at Village Paijaniya. Learned counsel for the applicant further submits that Vipin Kumar, who is son of the deceased, in his statement recorded under section 161 Cr.P.C. has stated that deceased was his father and he has four sisters and Reena is his wife, his younger brother is Vikul and his wife is Roopal, who is working at Uttrakhand and Vikul is residing at Saudi Arabia, the deceased had willed all his property in the names of his sisters, Mamta alias Guddi and Antim, and has diverted him from his property, the deceased had sold four Bighas of land for Rs. 18 lacs, he had willed four Bighas of land in the name of his wife, Reena, the wife of his younger brother, Roopal had disputed the same, the deceased had given Rs. 9 lacs to the co-accused, Golu @ Farman on interest, Rs. 6 lacs to the applicant and deceased spent Rs. 3 lacs in the marriage of of his daughter, Guddi alias Mamta, the deceased had taken his nephew, Dixit, aged about 13 years to his house and he willed four Bighas

of land in his name which was disputed by his brother-in-law, Rishipal and son of the deceased expressed apprehension that Golu @ Farman and the applicant had murdered the deceased. Learned counsel for the applicant further submits that as per version of the F.I.R. the last seen evidence has been assigned to the co-accused, Golu @ Farman, whereas two alleged witnesses, Anuj Kumar and Suryaveer Singh, after 25 days of the alleged incident, in their statements recorded under Section 161 Cr.P.C. have stated that they have seen the deceased in the company of all the accused persons including the applicant. Learned counsel further submits that there is no eye witness of the alleged incident, there is no direct evidence against the applicant and he has been made accused only on the basis of apprehension made by the son of the deceased. Learned counsel further submits that it is a case of circumstantial evidence and there is no eye witness of the alleged incident. Learned counsel for the applicant further submits that false recovery of alleged vehicle has been made from the joint possession of applicant, Golu alias Farman and Rishipal Singh from the road side and showing a recovery of Rs. 800/- and mobile phone which belong to the applicant. Learned counsel for the applicant further submits that aforesaid vehicle does not belong to the applicant. Learned counsel for the applicant further submits that co-accused, Rishipal Singh, against whom also there is evidence of last seen, has already been enlarged on bail by a coordinate Bench of this Court vide order dated 18.10.2023 passed in Criminal Misc. Bail Application No. 44284 of 2023 and the case of applicant is not on the worse footing than that of the aforesaid co-accused, Rishipal Singh. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 21.07.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at

the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence and distinguishing the case of co-accused Lavkush with the case of applicant, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Jitendra Alias Jhony**, involved in Case Crime No. 332 of 2023, under Sections 302, 201/34, 120-B I.P.C., Police Station Haldaur, District Bijnor, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

7. The bail application is **allowed**.

Order Date :- 21.11.2023

Mustaqeem.